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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/905,265	07/13/2001	Jeffrey A. Oleksy	000018	2658
23696	7590	09/09/2004	EXAMINER	
Qualcomm Incorporated Patents Department 5775 Morehouse Drive San Diego, CA 92121-1714			NGUYEN, QUYNH H	
			ART UNIT	PAPER NUMBER
			2642	

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/905,265

Applicant(s)

OLEKSY, JEFFREY A.

Examiner

Quynh H Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 07/13/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 8-10, 12-14, and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Merriam (U.S. Patent 6,408,187).

Regarding claim 1, Merriam teaches a method for adaptively modifying ("effectively adjusts") an alert tone volume ("the behavior of the communications device 100"), the method comprising the steps of: sampling an ambient sound level (col. 7, lines 1-4 – based upon the surrounding environment in which the communications device is situated); one or more sensors 112 senses the ambient sound level around the communications device and provides an affirmative indication of likelihood and enables a user to customize the behavior of the communication device (col. 3, line 51 through col. 5, line 2) reads on claimed "comparing the ambient sound level to a predetermined sound threshold"; if the ambient sound level is less than the predetermined sound threshold, reducing the volume by a predetermined amount (col. 6, lines 52- 58); and if the ambient sound level is greater than the predetermined sound threshold,

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increasing the volume by a predetermined amount (“adjust the volume of a ringer based upon the environment surrounding the communications device”) (col. 7, lines 1-12).

Regarding claim 2, Merriam teaches the mobile communications device is a cellular telephone (col. 3, lines 1-5).

Regarding claim 3, Merriam teaches a mobile communication device may be any device capable of sending and/or receiving communications and/or information (col. 3, lines 2-4). For example, a radio is capable of sending and receiving communications information.

Regarding claim 4, Merriam teaches the appropriate behaviors for the communications device have been determined to carry out the appropriate behaviors, for example, activating a vibrating alert, activating a communication forwarding mechanism (col. 2, lines 34-51) reads on claim 4.

Claim 8 is rejected for the same reasons as discussed above with respect to claim 1. Furthermore, Merriam teaches a cellular telephone comprising a microphone, an alert vibrator for activating if the ambient level is less than a lowest predetermined threshold of the plurality of predetermined thresholds (col. 4, lines 36-61).

Regarding claim 9, Merriam teaches “first vibrate to alert the user, and then if the user does not respond within a certain period of time, to activate a visual alert” (col. 5, lines 20-22) reads on claim 9.

Claims 10 and 12 are rejected for the same reasons as discussed above with respect to claim 5. Furthermore, Merriam teaches means for activating the

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alert vibrator in response to the difference between the ambient sound level and the at least one of the plurality of predetermined thresholds (col. 6, lines 46-58).

Regarding claims 13 and 14, Merriam teaches a receiver that receives an incoming call indication signal and means for sampling operates in response to the incoming call indication signal (col. 3, lines 50-60 and col. 6, lines 21-31).

Claim 16 is rejected for the same reasons as discussed above with respect to claims 1 and 13. Furthermore, Merriam teaches generating a sound threshold by sampling a first ambient sound level in response to a switch activation (col. 3, lines 50-60).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5-7, 11, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merriam (U.S. Patent 6,408,187).

Claim 5 is rejected for the same reasons as discussed above with respect to claim 1. However, Merriam does not specifically suggest adjusting the alert tone volume to a mid-range level.

Merriam teaches a method for automatically adjusting the behavior of a communications device based upon the surrounding environment in which the communications is situated including reducing and increasing the alert tone

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volume (col. 7, lines 1-32). Obviously, adjusting the alert tone volume would include adjusting the alert tone volume to a mid-range level.

Regarding claims 6, 7, 11, and 15, Merriam does not teach converting the ambient sound level to a digital signal and determining an analog signal level of the ambient sound level. Since the communications device may be a mobile or landline telephone, a pager, an electronic mail, a facsimile machine, a computer, and audio/video conferencing, therefore, it would be necessary to determine an analog signal level of the ambient sound level and converting the ambient sound level to a digital signal in order to adjust the alert tone volume of the communications device.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kraft et al. (U.S. Patent 6,463,278) teaches telephone automatic mode selection.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quynh H. Nguyen whose telephone number is 703-305-5451. The examiner can normally be reached on Monday - Thursday from 6:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on (703) 305-4731. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

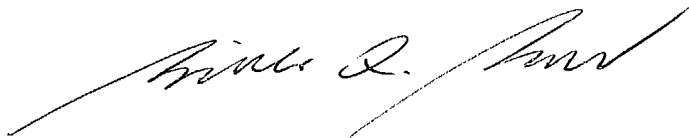
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

qhn

Quynh H. Nguyen

September 2, 2004

A handwritten signature in black ink, appearing to read "Bing Q. Bui", written in a cursive style.

**BING Q. BUI
PRIMARY EXAMINER**